STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion	))	
Consideration of the Federal Standard on Interconnection in Section 1254 of the Energy Policy Act of 2005	)))	06-0525

BRIEF ON EXCEPTIONS OF COMMONWEALTH EDISON COMPANY

Commonwealth Edison Company ("ComEd") submits this Brief on Exceptions with respect to the Administrative Law Judge's Proposed Order ("ALJPO") issued May 23, 2008, in this docket.

I. The Commission Should Clarify That Its Authority in Docket Derives From the Public Utilities Act.

In the Analysis and Conclusions in subsection V(a), "Whether there Should Be a Rule Governing Interconnection Procedures", the ALJPO makes certain statements that cause ComEd concern about the reasons for Commission action in this proceeding – specifically as it relates to federal legislation. The following is the language that ComEd regards as most problematic:

> Additionally, we note that the federal EPAct (also called "PURPA") *requires* this Commission, once it has decided to adopt IEEE Standard 1547, to develop agreements and procedures for interconnection. (16 U.S.C. Sec. 2621(d)(15)). Therefore, as the ELPC points out, *federal law confers jurisdiction on this Commission* to promulgate rules regarding interconnection. (Emphasis added.)
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> This argument overlooks other portions of the EPAct, however, which *require* this Commission to establish agreements and procedures whereby the services offered by a utility promote the current *best practices* regarding the interconnection of distributed generation. (*See, e.g.*, 16 U.S.C. 2621(d)(15)).

> The most organized and clear-cut way to develop such procedures and agreements is by way of promulgating a regulation. We also note that *the language in the federal statute clearly contemplates uniformity within a state, and it promotes national uniformity*, as, it requires state commissions to determine the "best practices, including, but not limited to practices stipulated in model codes adopted by associations of state regulatory agencies." (Emphasis added.)

Preliminarily, it should be noted that ComEd has never argued that the Commission does not have authority, under the Public Utilities Act, to promulgate the detailed procedural rules that have been put forth in this proceeding. Rather, ComEd has merely argued that it is unnecessary and would be inadvisable for the Commission to do so – an argument which, ComEd admits, the ALJPO rejects.

However, ComEd is concerned that the above-quoted language from the ALJPO would base the Commission's decisions in this docket on federal law. It is undeniable that the Commission is a creature of *Illinois* law and derives its authority therefrom. See generally Chapter 220 of the Illinois Compiled Laws, Act 5, Articles II and IV. Because of that, federal law cannot require or authorize the Commission to do anything inconsistent with its own state mandate. Moreover, limitations on Congressional authority are even be broader than that. The U. S. Supreme Court noted:

> We held in *New York* that Congress cannot compel the States to enact or enforce a federal regulatory program. Today we hold that Congress cannot circumvent that prohibition by conscripting the State's officers directly. The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program. It matters not whether policymaking is involved, and no case-by-case weighing of the burdens or benefits is necessary; such commands are fundamentally incompatible with our constitutional system of dual sovereignty. *Printz v United States*, 521 US 898 at 935, 117 S Ct 2365 at 2384, 138 L Ed 2d 914 at 944-945.

See also *New York v. United States*, 505 U.S. 144 at 162, 120 L. Ed. 2d 120 at 141, 112 S. Ct. 2408 at 2421.

The reasons for the Commission's decisions in this order, therefore, should not be because "the language in the federal statute clearly contemplates uniformity within a state, and it promotes national uniformity", but rather because they are best for Illinois electric customers considering all the potential benefits and costs. National uniformity and the "best practices"[1] from other jurisdictions should not themselves be the Commission's goals, but rather simply input in deciding what is best for the electric service environment in the State of Illinois.

II. The ALJPO Should Accurately Reflect ComEd's Position About Changing Application Fees.

In the Analysis and Conclusions in subsection V(c), "Section 466.50 Application Fees", the ALJPO refers to ComEd's position as "utilities should be allowed to increase application fees as they see fit." That is not the case. In fact, the title of the section of ComEd's Reply Comments dealing with the issue is: The Rules Should Permit Fee Change With Commission Consent. ComEd did not ask that utilities have unfettered discretion to raise application fees – only that they not be required to put the Commission through a rulemaking proceeding in order to do so. ComEd asked that the rules allow for a fee change *if approved by the Commission.* ComEd is not aware of any other situation in which a specific charge intended to allow utilities to recover their costs is detailed in a

[1] Again, ComEd questions the never-defined term "best practices". It is a value-laden, subjective term whose true meaning lies solely in the "eye of the beholder". ComEd suggests that the Commission not base any of its decisions on the "best practices" of other jurisdictions because doing so will only beg the question as to what is a "best practice"(e.g., Is it *any* practice adopted by another jurisdiction? Would it be a best practice if a jurisdiction refused to allow any state-jurisdiction interconnection at all?). Instead, the Commission should ignore the term, since neither the federal legislation nor the Net Metering Law defines it, and simply base its decisions on what it believes to be best for all electric customers in Illinois.

Commission rule. To correct the foregoing, ComEd asks that the following language changes be made:

> We disagree with ComEd's assertion that utilities should be allowed to increase application fees ~~as they see fit~~ even with Commission permission. It may very well be that the application fees, at some point in time, should increase. However, we decline to presume, now, that such a change ~~is~~ would be inevitable or that such a change would be soon.

Respectfully submitted,
COMMONWEALTH EDISON COMPANY

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Certificate of Service

I, Michael S. Pabian, hereby certify that I have served a copy of the foregoing Brief on Exceptions of Commonwealth Edison Company on the parties by electronic mail, this 30th day of May, 2008.

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Michael S. Pabian